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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 701

LA SALLE STEEL COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (C. A. 52-61),[1] is reported at 178 F. 2d 829. The findings of fact,

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[1] References to portions of the record printed by the Board and the Company are designated "(B.A.)" and "(C.A.)" respectively. References to the typewritten transcript of testimony, certified by the Board to the court below, and lodged by the Clerk of the Court of Appeals with this Court, are designated "(Tr.)".

conclusions of law, and order of the National Labor Relations Board (B. A. 6-37) are reported at 72 NLRB 411.

JURISDICTION

The decree of the court below was entered on January 3, 1950 (C. A. 62-64). The Company's petition for a writ of certiorari was filed on March 25, 1950. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq.*), and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141, *et seq.*), are set forth in Appendix A, *infra*, pp. 24-27.

QUESTIONS PRESENTED

We believe that the following questions are presented on this record:

(1) Where substantial evidence supports the Board's finding that an employer directed or ordered employees to support and solicit membership for one of two rival labor organizations; interrogated an employee as to his union activity; and announced approval of a wage increase at a critical moment before an election, crediting the favored organization for this result, does the First Amend-

ment or Section 8 (c) of the amended Act preclude the Board from finding such conduct violative of Section 8 (1) of the Act?[2]

2. Whether the amendment to Section 10 (e), concerning the scope of judicial review, precludes the Board from finding that promulgation of a rule prohibiting union solicitation on an employer's property during non-working hours violates Section 8 (1) of the Act, there being no evidence that such a rule is necessary for the proper conduct of the employer's business?

3. Where substantial evidence supports the Board's finding that the employer has unlawfully assisted a labor organization, may the Board properly order the employer to refrain from recognizing or bargaining with that organization until it has been certified by the Board?

STATEMENT

A. *The facts found by the Board.*—Upon the usual proceedings under Section 10 of the National Labor Relations Act, the Board, on February 6, 1947, issued its findings of fact, conclusions of law,

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[2] Although question numbered 3(4) of the petition (Pet., p. 20) raises the question "Is there substantial evidence on the record as a whole to support the Board's order, or any part thereof?" petitioner nowhere argues that the Board's subsidiary findings and conclusions as to the nature of the Company's conduct set forth below are not supported by substantial evidence and relies solely upon its claim of Constitutional and statutory immunity (see pp. 13-14, *infra*).

and order. The pertinent facts may be summarized as follows:

Petitioner, La Salle Steel Company, hereinafter called the Company, operates a steel plant in Hammond, Indiana, where the unfair labor practices here involved occurred (B. A. 22; 39, 103).[3] In 1937, the United Steel Workers of America, C. I. O., hereinafter called the Union, unsuccessfully attempted to organize the Company's employees (B. A. 23; 45, 53, 60). At about the same time, an independent employees' organization, La Salle Employees' Association, Inc., hereinafter called the Association, was organized and recognized by the Company as the exclusive bargaining representative of its employees (B. A. 23; 53, 60-61, 75).

On or about September 11, 1944, one of the employees communicated with an international representative of the Union and advised him that the Company's employees desired to join the Union (B. A. 23; 65). Thereupon, the Union began an organizational campaign among the employees by distributing leaflets in front of the plant gate and scheduling a meeting to be held on September 15 (*id.*) In September 1944, Vice President See, who was responsible for the Company's labor relations policies, met with representatives of the Associa-

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[3] Where, in a series of record references, a semi-colon appears, the references preceding it are to the Board's finding, and those following it are to the supporting evidence.

tion, and, after pointing out that the Association "was not functioning very well" (B. A. 56), instructed them that "he wanted the Association kept running." He admitted that he was "sticking his neck out too far," but nevertheless declared that the representatives should "cooperate to help the Association," because "he didn't want it to die out." (B. A. 25; 55, Tr. 157-160).

The following month, Plant Superintendent Evens called Sutkowski, an employee of long standing, to his office, and after making clear to him the Company's opposition to the Union, said (B. A. 23-24; 45-47):

> Well, as far as the C. I. O. is concerned, it is up to you old men. If you want it in, well, there is nothing I can do about it. However, if you old men don't want it in here, there is a lot you can do. There is Herman Uhter, there is Story, Fred Lack, they are trying hard to stop it.

The Company's policy thus set by Vice President See and Superintendent Evens was further implemented by Foreman Sylwestrowicz. On September 15, 1945, while leaflets announcing the Union meeting to be held that evening were being distributed in front of the plant, Foreman Sylwestrowicz cautioned employee Emil Balash, one of his subordinates, to pay no attention to the "men out at the gate passing out C. I. O. handbills" (B. A. 24; 58,

65). Sylwestrowicz added that the Company "was very equal with their men and that they didn't need any union * * * he never thought that the C. I. O. would get into LaSalle Steel" (*ibid.*). On the following day, Sylwestrowicz asked Balash whether he had attended the union meeting (B. A. 24; 59). Sylwestrowicz, on this occasion, advised Balash that the "Association was getting active and looking for new members," and asked Balash to join the Association (*ibid.*).

Pursuant to a petition filed by the Union in February, 1945, the Board scheduled an election to be conducted in the plant on April 20, 1945 with the Union and the Association on the ballot (C. A. 39). On April 19, 1945, the day preceding the election, the Company distributed to its employees, and posted on the bulletin boards, a letter signed by Vice President See expressing the Company's satisfaction with what See termed the "pleasant and harmonious" labor relations then existing, and restating the Company's policy with respect to union activity on company property (B. A. 25-27; 40-41, 106-107). The letter set forth the following rule (B.A. 25-26; 41, 106):

> Solicitation of memberships of any kind on company time or property has been and will continue to be prohibited.

This was the first time that the Company had formalized in writing its rule prohibiting solicita-

tion during non-working as well as working time.[4]

On the day of the election, about one hour before the employees on the afternoon shift were scheduled to vote, Vice President See announced throughout the plant that the War Labor Board had approved a wage increase for the employees and that retroactive payments would be made as soon as possible. The announcement, which gave credit for the increase to the Association equally with the Company, was made at this time despite the fact that the Company had not as yet received from the War Labor Board official notification of the action (B. A. 10, 27; 47-49, 69, 71-72, 109). The Union lost the election (C. A. 39).

B. *The Board's conclusions.*—The Board found (B. A. 7-8), that by directing its employees to keep the Association alive and to support it as a bulwark against the Union; by interrogating Balash with respect to his attendance at the Union meeting and soliciting his membership in the Association; by creating prestige for the Association through its critically timed announcement of the wage increase; and by prohibiting union solicitation during non-working hours, the Company violated Section 8 (1) of the Act. The Board found that the conduct of the Company's officers was "designed to

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[4] Plant Superintendent Evens had previously orally warned employees against "talking union" or soliciting union memberships on company time or property and had instructed all foremen to report any activity of that nature (B. A. 28; 61, 67-68).

throw the full weight of management's prestige and economic power behind the Association." Specifically, the Board found that "viewed in the light of the attending circumstances" the statements of See and Evens were not mere expressions of opinion but "were in the nature of directives or orders which employees do not normally feel free to ignore"; and that the solicitation and interrogation of Balash by Sylwestrowicz were "acts of unlawful interference and intimidation * * *."

The Board, reversing the Trial Examiner, held that while the letter of April 19, 1945, may have been a "subtle 'appeal to the employees to vote for the * * * Association'" it was "the sort of expression of opinion that is protected by the Constitution" (B. A. 8-9, 25-27). The Board also held protected Foreman Walker's statement to employee Skaggs in the fall of 1944 that "the C. I. O. was no good and all they are doing was trying to bleed the men for their money" (B. A. 7, 24-25; Tr. 264).

C. *The Board's order.*—The Board ordered the Company to cease and desist from (1) encouraging activity on behalf of, and membership in, the Association while discouraging activity on behalf of, and membership in, the Union; (2) prohibiting union activity on company property during nonworking time; and (3) in any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to

form labor organizations, to join or assist the Union, or any other labor organization of its employees, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act (B. A. 12-13).

The Board also ordered the Company to rescind its rule prohibiting union activity on company property, insofar as it applies to the employees' non-working time; refrain from entering into any collective bargaining contract with the Association, or otherwise dealing with it as the bargaining representative of petitioner's employees unless and until the Association shall have been certified as such representative by the Board; and to post the usual notices (*ibid.*).

D. *The proceedings in the Court of Appeals.*—In its brief in the court below, opposing the Board's petition for enforcement of its order, the Company challenged the Board's finding that the statements of See and Evens, set forth above (*supra,* pp. 4-5), were "directives or orders" and asserted that these statements, as well as Sylwestrowicz' interrogation and solicitation of Balash, were mere expressions of "views, arguments, or opinions" (Br. pp. 28-30).[5] The Company stated (Br., p. 28), that Section 8 (c) of the amended

[5] Copies of the briefs filed in the court below have been lodged with the Clerk of this Court.

Act constituted merely a restatement of the area of protected speech delineated in *Thomas* v. *Collins,* 323 U. S. 516, and thereby, as the court below noted, in effect conceded that if the statements "go beyond the 'expressing of * * * views, argument or opinion'," they are not protected either by the First Amendment or by Section 8 (c) and may "constitute evidence of unfair labor practices" (C. A. 58-59). The Company further conceded that the Board had based its findings concerning the nature of the statements upon "all of the evidence * * * taken together" (Br., p. 38), and urged that if the court should hold, contrary to the Board, that any of the incidents relied upon were mere expressions of views, argument or opinion, the court should remand the case to the Board "to determine whether the Board would have issued its order on the remaining evidence if such remaining evidence is considered substantial" (*ibid.*).

The court held that the statements relied upon by the Board "go beyond the expression of 'views, argument or opinion' * * * and constitute acts of interference with [the] employees' right to elect their own bargaining representative" (C. A. 59). Quoting the decision of this Court in *National Labor Relations Board* v. *Virginia Electric & Power Co.,* 314 U. S. 469, 477, that "pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways," the court held that "the statements in question, in con-

nection with the announcement made by respondent on the day of the election, constitute substantial evidence of interference,"[6] and "require this court to sustain the Board's finding that respondent violated Section 8 (1) of the Act" (C. A. 59, see also, 55).

The court below also rejected the Company's contentions (1) that the amendment to Section 10 (e) of the Act left unsupported the Board's finding that the Company's promulgation of a rule prohibiting solicitation during non-working hours violated Section 8 (1) of the Act (C. A. 57-58), and (2) that insofar as the Board's order enjoined the Company from recognizing the Association unless and until it was certified by the Board, it was not justified by the violations found (C. A. 60).

ARGUMENT

1. The court below did not hold, contrary to petitioner's contention (Pet., pp. 21, 23), that the "First Amendment does not apply to Section 8 (1) of the Act." Indeed, the opinion on its face discloses that the court below tested the statements here involved by the criteria established in *National Labor Rela-*

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[6] This language, and the opinion as a whole, make it clear that although the court, perhaps inadvertently, referred to all of the statements of See, Evens and Sylwestrowicz as "interrogation" (C. A. 55, cf. 59), it did not thereby intend to reject the Board's findings as to the nature and coercive effect of the directives, orders, and solicitation, or to hold that the statements were violative of the Act only insofar as they constituted "interrogation." The Board did not, as petitioner suggests (Pet., p. 35), abandon in the court below its finding that the solicitation was an unfair labor practice.

tions Board v. *Virginia Electric & Power Co.*, 314 U. S. 469, and reaffirmed in *Thomas* v. *Collins*, 323 U. S. 516. The court applied the distinction drawn in those cases between mere expression of opinion, or argument, unaccompanied by promise of benefit or threat of reprisal, which is protected by the First Amendment, and "pressure exerted vocally" by the employer, which is not.

The same distinction, as the legislative history of the amended Act establishes (93 Cong. Rec. 3837), and as petitioner conceded in the court below (*supra*, pp. 9-10), was embodied in Section 8 (c).[7] That Section protects from consideration as evidence of unfair labor practices only the "expressing of views, argument, or opinion," and not directives, orders, interrogations and solicitation. In the course of debate on the bill which became the amended Act, Senator Taft specifically stated that Section 8 (c) "has no application to statements which are acts in themselves or contain directions or instructions" (93 Cong. Rec. 6444, 6860).[8]

The Board gave effect to this distinction in its decision, which preceded enactment of Section 8 (c). Thus, the Board held that the appeal to the

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[7] In view of this concession, petitioner's question numbered 2 (3), "In its application to this case, is the free speech protection provided in Section 8 (c) broader than the guarantee of the First Amendment," was not specifically answered by the court below and, hence, is not appropriately presented to this Court for decision. Cf. *United States* v. *Ballard*, 322 U.S. 78, 88.

[8] Cf. *International Brotherhood* v. *National Labor Relations Board*, decided February 24, 1950 (C. A. 2).

employees to vote for the Association, which was contained in the Company's letter of April 19, 1945, and the statement of Foreman Walker to employee Skaggs (*supra,* pp. 6, 8), being no more than efforts to *persuade* the employees to action, were constitutionally protected, while the verbal acts through which the Company interfered with the employees' freedom of choice, were not.[9] Cf. *Giboney* v. *Empire Storage Co.,* 336 U. S. 490. Since the Board did not find that any statement by petitioner which amounted to no more than an "expression of views, argument or opinion" constituted an unfair labor practice because it was intertwined with petitioner's coercive course of conduct, this case does not present the question whether Section 8 (c) would preclude the Board from making such a finding. (See note 10 *infra,* p. 15.)

2. The Board's finding that the statements of See, Evens, and Sylwestrowicz were not mere expressions of opinion but rather directions or orders, interrogation and solicitation is, as the court below held, amply supported by the evidence set forth in the Statement, *supra,* pp. 3-7, and the Company, in its Petition, nowhere argues to the contrary. The Company argues rather (Pet., p. 22), that "The findings and conclusions of the Board were made on the basis that there was no direct use of economic

[9] This holding makes it clear that the Board's decision in this case does not rest, as petitioner implies (Pet., p. 36), upon any distinction between statements made to individual employees and announcements to groups of employees.

power, but that *any* statement to an employee by *any* top representative of a management was *necessarily* 'coercive.' " This contention, as the Board's decision shows, is palpably untenable. The Board found (B. A. 8) that the Company threw the "full weight" of its "economic power behind the Association," and that See's statement that "he wanted the Association kept running," and the "pressure exerted upon employees Sutkowski by Superintendent Evens to enlist his aid in supporting the Association and defeating the Union, * * * especially when viewed in the light of the attending circumstances, were in the nature of directives or orders which employees do not normally feel free to ignore." The Board further found that the solicitation and interrogation of Balash by Sylwestrowicz were acts of "intimidation."

3. The cases which petitioner claims hold conduct similar to that here involved to be protected by the First Amendment and Section 8 (c) (Pet., pp. 29, 32-33), do not support its position. None of the cases hold that instructions or directions issued by management to employees, or the questioning and solicitation of employees by management officials, are protected by the First Amendment or Section 8 (c) from being considered unfair labor practices. The cases cited on page 29 of the Petition hold only that communications outlining management's views, opinions, and arguments, which contain no threat of reprisal or promise of benefit, are protected by the First Amendment. The cases cited on

page 32-33 of the Petition, which discuss both the First Amendment and Section 8 (c), likewise hold only that such communications are protected.[10] Indeed, insofar as these cases involve conduct similar to that found unlawful in the instant case, they are in accord with the holding below on the free speech question. In *National Labor Relations*

[10] In *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, decided February 17, 1950 (C. A. 6), petition for certiorari pending, No. 732, this Term, upon which the Company relies, the court held that in view of Section 8 (c), the "Ferbert letters", which the Board had found not to be violative of the Act *per se*, could not be considered part of an illegal pattern of conduct by the company. No analogous question is raised in the instant case, since the Board did not find the Company's letter of April 19, 1945, to be part of the pattern of illegal conduct, and, except to the extent that it announced the no-solicitation rule, did not find the letter violative of the Act. In *National Labor Relations Board* v. *The Bailey Co.*, 180 F. 2d 278, 280 (C. A. 6), the same judges who decided the *Pittsburgh* case held that a pre-election announcement of a wage increase by the company was not protected by the First Amendment or Section 8 (c), citing with approval the holding of the court below in the instant case. In *National Labor Relations Board* v. *Electric City Dyeing Co.*, 178 F. 2d 980, 981 (C. A. 3), upon which the Company also relies, the court found that a speech to employees by a management representative went beyond persuasion because it contained statements which coerced, intimidated and promised benefits to employees, and held the speech unprotected and violative of Section 8 (1). In *National Labor Relations Board* v. *Kropp Forge Co.*, 178 F. 2d 822, 826-829 (C. A. 7), the court below did not hold, as petitioner asserts (Pet., p. 33), that the phrase "views, argument or opinion" protected "similar expressions to the ones in this case." The court held precisely the contrary. It found that under the circumstances there presented, statements by the plant manager to employees that "I don't want no organization in here," and that "I don't care whether the employees form an independent organization or one affiliated with the A. F. of L., but for the love of Pete, anything but the C.I.O.," were not protected by the First Amendment or Section 8 (c), and were properly found by the Board to constitute violations of Section 8 (1).

Board v. *O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445, 447 (C. A. 9), the court held that the conduct of management representatives in instructing employees to solicit membership for one of two rival labor organizations constituted unlawful assistance in violation of Section 8 (1). In *National Labor Relations Board* v. *Minnesota Mining & Mfg. Co.*, 179 F. 2d 323, 326 (C. A. 8), the court specifically found that "questioning of employees is not protected by Section 8 (c) of the Act, * * * and was an unfair labor practice."

This Court and every court of appeals which has considered employer conduct analogous to that found unlawful in the instant case has held that directions or orders to support or refrain from supporting a labor organization, direct solicitation of membership, interrogation of employees concerning union activity, and announcement of wage increases designed to bolster the prestige of one labor organization at the expense of another or to demonstrate that unionization is entirely unnecessary,[11] are violative of Section 8 (1) of the Act. For references to the many cases to this effect, see Appendix B, *infra*, pp. 28-29.

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[11] In *S. Frieder & Sons*, 62 NLRB 881, 886, the Board found that the action of the employer on the morning of the Board election, in posting a notice that the War Labor Board had approved the employer's application for vacations with pay, constituted unlawful interference. The Court of Appeals for the Third Circuit enforced the Board's order in full in a *per curiam* opinion, 155 F. 2d 266. The War Labor Board, during its existence, also found that "an increase on the eve of an election may endanger the fairness of the election." *Western Cartridge Co.*, 6 War Lab. Rep. 17, 18. There are no contrary holdings.

4. Petitioner argues (Pet. pp. 34-35), that in treating the statements of See, Evens and Sylwestrowicz, together with the wage increase announcement, as parts of a single course of conduct by the Company, the court below departed from the Board's findings. Petitioner cites, as embodying the Board's view, the statement in the Board's opinion (B.A. 8) that the solicitation and interrogation of Balash by Sylwestrowicz "constituted acts of unlawful interference and intimidation *per se.*" But the Board also adopted (B.A. 7) the finding of the trial examiner (B.A. 28), that Sylwestrowicz' conduct was part of a "consistent pattern" of conduct by the Company, "assisting and encouraging membership and activity in one labor organization while discouraging membership and activity in another." In any event, Petitioner's concession in the court below (Br., p. 38) that "The Board * * * based its conclusion that respondent violated Section 8 (1) of the Act on all of the evidence * * * taken together," makes wholly inappropriate its request of this Court to decide to the contrary. See *supra,* p. 10.[12]

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[12] Since in this case the interrogation of Balash does not stand "naked and alone", the decision in no sense conflicts with *National Labor Relations Board* v. *Hinde & Dauch Paper Co.,* 171 F. 2d 240 (C. A. 4). The *Hinde & Dauch* case is similar to *Sax* v. *National Labor Relations Board,* 171 F. 2d 769, which the court below distinguished on this very ground (C.A. 59). Since Foreman Sylwestrowicz' conduct was not contrary to, but in accordance with, the policy set by the highest officials of the Company, the holding of the court below that the Company is chargeable with Sylwestrowicz' conduct is not in conflict with such cases as *National*

5. Petitioner is in error when it asserts that the amendment to Section 10 (e) which provides that the courts shall enforce orders of the Board if the findings are supported by "substantial evidence on the record considered as a whole," has reversed the rule of *Republic Aviation Corp.* v. *National Labor Relations Board,* 324 U. S. 793. In the *Republic* case, this Court held that promulgation of a rule prohibiting solicitation of union membership on company property during employees' non-working time violated Section 8 (1) of the Act. The Court sustained the Board's finding that, in the absence of evidence that such a rule was necessary to maintain discipline, the resultant interference with union activity was unreasonable.[13] Section 10 (e), which deals with the scope of judicial review, did not amend Section 8 (1), which defines substantive unfair labor practices, and promulgation or en-

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Labor Relations Board v. *Montgomery Ward & Co.,* 157 F. 2d 486, 501 (C. A. 8), and *National Labor Relations Board v. Brown-Brockmeyer Co.,* 143 F. 2d 537, 541 (C.A. 6). In view of the holding of the Board and the court below that Sylwestrowicz' statements were not merely reflections of his "personal opinion," and were not contrary to Company policy, petitioner's question numbered 3 (3) (Pet., p. 20), is not properly presented in this case.

[13] *National Labor Relations Board* v. *Enid Co-op. Creamery Ass'n,* 169 F. 2d 986 (C. A. 10), which petitioner claims is in conflict with the decision below on this point is clearly distinguishable. There the company moved the court to remand the case to the Board to take proffered evidence that the rule under the special circumstances there involved was necessary to preserve discipline, and the court granted the motion. In the special circumstances of that case, the Board thereafter did not take further evidence but modified its order by eliminating the requirement that the company

forcement of a no-solicitation rule, under the circumstances of the *Republic* case, therefore remains a violation of the Act. As the court below stated (C. A. 57-58):

> While the amendment may mean that existence of the no-solicitation rule must be proved by "substantial evidence on the record considered as a whole" instead of just "substantial evidence," it does not seem to us that it could have the effect of altering the weight to be accorded to the existence of the rule, once the fact is proved. And the clear statement of the rule in the letter distributed by [the Company] to its employees on the eve of the election precludes the court from setting aside the Board's finding, for it is, undeniably, substantial evidence of the existence of the rule, whether viewed alone or on the record considered as a whole.

The legislative history upon which petitioner relies to support its argument that the amendment to Section 10 (e) was intended to affect the rule of the *Republic* case (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 56; S. Rep. No. 105, 80th Cong., 1st Sess., p. 26),[14] constitutes little more than an

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rescind its rule. In thereafter reviewing the Board's order, the court commented (169 F. 2d, at p. 987): "In view of the failure of the Board to hear testimony on the issues framed by the order of remand, and the abandonment of its recission order, we must presume that the order was, in the special circumstances, necessary to maintain production or discipline."

[14] H. Rep. No. 245, 80th Cong., 1st Sess., p. 41, cited by the petitioner (Pet., p. 33, note 4) bears less directly on the problem than S. Rep. No. 105, cited above.

expression of the Congressional committees' view that "inferences" should not be drawn from "facts which are not in the record." S. Rep. No. 105, *supra*. This Court's decision in the *Republic* case is not inconsistent with that view and, in suggesting otherwise, the committees misconceived the holding in that case. For this Court, in the *Republic* case, specifically upheld the power of the Board to "infer within the limits of the inquiry *from the proven facts* such conclusions as reasonably may be based *upon the facts proven.*" 324 U. S. 800 (Italics supplied). In that case, as here (B. A. 28, note 4), the Board's finding that the rule against solicitation interfered with legitimate union activity rested upon the evidence in the record that the rule existed and was enforced and upon the company's failure to prove that such interference was justified by its business needs.

Dissatisfaction of a Congressional committee with the judgments of this Court in a number of cases, in no way reflected in the language of the statute, is slim basis for implying an overruling of those decisions. Were it the Congressional purpose to change the law as to what constitutes an interference under Section 8 (1), it is hardly likely that Congress would seek to accomplish that result by amending Section 10 (e). In any event, that conclusion is not to be inferred from loose language in a committee report critical of seven decisions of this and other courts covering a wide

span of labor relations law. Cf. *United States* v. *Ogilvie Hardware Co.*, 330 U. S. 709, 719. Section 10 (e) certainly does not in terms preclude the Board from holding that the burden of proof as to affirmative defenses rests with the employer, or from inferring "within the limits of the inquiry from the proven facts such conclusions as reasonably may be based upon facts proven." *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 800; see also *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 663 (C. A. 2); cf. *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U. S. 226, 229-232; *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147, 150-151 (C. A. 6). Since the Company introduced no evidence of special circumstances which rendered such a rule necessary in its establishment, the court below was clearly correct in sustaining the Board's finding that, upon the evidence in the record, the rule constituted an unreasonable interference with the rights guaranteed employees in Section 7. There are no contrary decisions.

6. The Company's contention (Pet., p. 31), that that portion of the Board's order which requires the Company to refrain from recognizing or bargaining with the Association unless and until it is certified is unwarranted because the Company had refrained from entering into a contract or bargaining with the Association while the election of

April 20 was pending, misconceives the nature of the unfair labor practice which the order was designed to remedy.

The Board found that the Company had unlawfully assisted the Association and had thereby precluded the employees from freely selecting a bargaining representative. To permit the Company to recognize and bargain with the Association while this unfair labor practice remains unremedied, as the Company continued to do after the election (Tr. 463), would allow the Company to retain the fruits of its illegal conduct. Under these circumstances, the order forbidding recognition until the Association is certified is clearly adapted to the situation which calls for redress. *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, 194. Similar orders based upon findings of illegal assistance, have uniformly been sustained by the courts. *Elastic Stop Nut Corp.* v. *National Labor Relations Board,* 142 F. 2d 371, 376, 379-380 (C. A. 8), certiorari denied, 323 U. S. 722; *National Labor Relations Board* v. *Winona Knitting Mills, Inc.,* 163 F. 2d 156, 161 (C.A. 8); *National Labor Relations Board* v. *John Engelhorn & Sons,* 134 F. 2d 553, 558 (C.A. 3); *National Labor Relations Board* v. *Southern Wood Preserving Co.,* 135 F. 2d 606, 607 (C. A. 5); *National Labor Relations Board* v. *Cowell Portland Cement Co.,* 148 F. 2d 237, 246 (C. A. 9); *Independent Employees Ass'n* v. *National Labor Rela-*

tions Board, 158 F. 2d 448, 456-457 (C. A. 2), certiorari denied, 333 U. S. 826. There is no conflict of decisions nor is any claimed to exist.

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY, 1950.

APPENDIX A

1. The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and con-

taining a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * * In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

2. The relevant provisions of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141 *et seq.*) are as follows:

* * * * *

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

"SEC. 10 (e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the

court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347)."

* * * * *

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

* * * * *

Int'l. Ass'n of Mach. v. *National Labor Relations Board,* 311 U. S. 72, 78-79; *Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514, 518-519; *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 596, 599; *National Labor Relations Board* v. *Bird Machine Co.,* 161 F. 2d 589, 591 (C. A. 1); *National Labor Relations Board* v. *Consolidated Machine Tool Corp.,* 163 F. 2d 376, 378 (C. A. 2), certiorari denied, 332 U. S. 824; *National Labor Relations Board* v. *American Laundry Machine Co.,* 152 F. 2d 400, 401 (C. A. 2); *National Labor Relations Board* v. *Fitzpatrick & Weller,* 138 F. 2d 697, 699 (C. A. 2); *National Labor Relations Board* v. *M. E. Blatt Co.,* 143 F. 2d 268, 269, 273-275 (C.A. 3), certiorari denied, 323 U. S. 774; *P. H. Glatfelter Co.* v. *National Labor Relations Board* 141 F. 2d 631, 632-633 (C. A. 3); *National Labor Relations Board* v. *Norfolk Southern Bus Corp.,* 159 F. 2d 516, 518 (C. A. 4), certiorari denied, 330 U. S. 844; *National Labor Relations Board* v. *Dixie Shirt Co.,* 176 F. 2d 969, 971, 973 (C. A. 4); *American Enka Corp.* v. *National Labor Relations Board,* 119 F. 2d 60, 62, 63 (C. A. 4); *National Labor Relations Board* v. *Union Mfg. Co.,* 179 F. 2d 511, 513 (C. A. 5); *National Labor Relations Board* v. *East Texas Motor Freight Lines,* 140 F. 2d 404, 405 (C. A. 5); *Big Lake Oil Co.* v. *National Labor Relations Board,* 146 F. 2d 967, 969, 970 (C. A. 5); *National Labor Relations Board* v. *Peterson,* 157 F. 2d 514, 515 (C.A. 6), certiorari denied, 330 U. S. 838; *National*

Labor Relations Board v. *Mylan-Sparta Co., Inc.*, 166 F. 2d 485, 489-490 (C. A. 6); *National Labor Relations Board* v. *Laister-Kauffmann Aircraft Corp.*, 144 F. 2d 9, 17 (C. A. 8); *Locomotive Finished Material Co.* v. *National Labor Relations Board*, 142 F. 2d 802, 803 (C. A. 10); *National Labor Relations Board* v. *Kopman-Woracek Shoe Mfg. Co.*, 158 F. 2d 103, 105 (C. A. 8); *National Labor Relations Board* v. *Winona Knitting Mills*, 163 F. 2d 156, 158 (C. A. 8); *National Labor Relations Board* v. *Morris P. Kirk & Son*, 151 F. 2d 490, 492 (C. A. 9); *National Labor Relations Board* v. *Reeves Rubber Co.*, 153 F. 2d 340, 341 (C. A. 9); *National Labor Relations Board* v. *Lettie Lee, Inc.*, 140 F. 2d 243, 249 (C. A. 9); *National Labor Relations Board* v. *Gilfillan Bros., Inc.*, 148 F. 2d 990, 991 (C. A. 9); *National Labor Relations Board* v. *Armour & Co.*, 154 F. 2d 570, 577 (C. A. 10), certiorari denied, 329 U. S. 732; *National Labor Relations Board* v. *Fairmont Creamery Co.*, 144 F. 2d 128, 129 (C. A. 10); *Utah Copper Co.* v. *National Labor Relations Board*, 139 F. 2d 788, 790-791 (C. A. 10), certiorari denied *sub nom. Independent Association of Mill Workers* v. *National Labor Relations Board*, 322 U. S. 731; *E. Anthony & Sons* v. *National Labor Relations Board*, 163 F. 2d 22, 25-26 (C. A. D. C.), certiorari denied, 332 U. S. 773. See also, *Texas & N. O. R. Co.* v. *Brotherhood of Clerks*, 281 U. S. 548, 559-560; *Ex Parte Curtis*, 106 U. S. 371, 374.

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